

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Zachary Herman	Team: Squad #12	CCRB Case #: 201900375	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 01/12/2019 3:45 PM	Location of Incident: [REDACTED]	Precinct: 113	18 Mo. SOL 7/12/2020	EO SOL 2/26/2021	
Date/Time CV Reported Sat, 01/12/2019 5:00 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 01/12/2019 5:00 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Christophe Catapano	23988	957438	113 PCT
2. POM David Fitchik	16674	957591	113 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM John Silvestro	31886	955494	113 PCT
2. POM John Robert	16757	957922	113 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christophe Catapano	Abuse: Police Officer Christopher Catapano frisked § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Christophe Catapano	Abuse: Police Officer Christopher Catapano searched § 87(2)(b) [REDACTED]	[REDACTED]
C.POM Christophe Catapano	Abuse: Police Officer Christopher Catapano frisked § 87(2)(b) [REDACTED]	[REDACTED]
D.POM Christophe Catapano	Abuse: Police Officer Christopher Catapano searched § 87(2)(b) [REDACTED]	[REDACTED]
E.POM David Fitchik	Abuse: Police Officer David Fitchik frisked § 87(2)(b) [REDACTED]	[REDACTED]
F.POM David Fitchik	Abuse: Police Officer David Fitchik searched § 87(2)(b) [REDACTED]	[REDACTED]
G.POM Christophe Catapano	Abuse: Police Officer Christopher Catapano frisked an individual.	[REDACTED]
H.POM Christophe Catapano	Abuse: Police Officer Christopher Catapano searched an individual.	[REDACTED]
I.POM David Fitchik	Abuse: Police Officer David Fitchik frisked an individual.	[REDACTED]
J.POM David Fitchik	Abuse: Police Officer David Fitchik searched an individual.	[REDACTED]
K.POM Christophe Catapano	Abuse: Police Officer Christopher Catapano frisked an individual.	[REDACTED]
L.POM Christophe Catapano	Abuse: Police Officer Christopher Catapano searched an individual.	[REDACTED]
M.POM David Fitchik	Abuse: Police Officer David Fitchik frisked an individual.	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
N.POM David Fitchik	Abuse: Police Officer David Fitchik searched an individual.	[REDACTED]
O.POM Christophe Catapano	Abuse: Police Officer Christopher Catapano searched the vehicle in which § 87(2)(b) and individuals were occupants.	[REDACTED]
P.POM David Fitchik	Abuse: Police Officer David Fitchik searched a vehicle in which § 87(2)(b) and individuals were occupants.	[REDACTED]

## Case Summary

On January 12, 2019, § 87(2)(b) filed this complaint with the CCRB over the phone.

On January 12, 2019, at approximately 3:45 p.m., § 87(2)(b) was driving a black Mercedes-Benz SUV registered to his girlfriend, § 87(2)(b), in the vicinity of § 87(2)(b) in Queens. Three other individuals were in the vehicle with him: § 87(2)(b) and two individuals known only as § 87(2)(b) and § 87(2)(b). As § 87(2)(b) was driving, he observed a marked police vehicle following him. At Boulevard and Farmer Boulevard in Queens, when he pulled into the parking lot, the police vehicle stopped § 87(2)(b) using lights and sirens.

Two police officers, PO Christopher Catapano and PO David Fitchik, both assigned to the 113<sup>th</sup> Precinct, approached § 87(2)(b) vehicle. PO Catapano spoke with § 87(2)(b) and after obtaining registration information and identification from § 87(2)(b) both officers returned to their vehicle. § 87(2)(b) did not have a driver's license or a learner's permit with his photograph on it. After approximately ten minutes, another marked police arrived, and two officers exited, PO John Silvestro and PO John Robert, both assigned to the 113<sup>th</sup> Precinct, exited the vehicle. They spoke to one of the officers on scene, then all four officers approached the vehicle.

PO Catapano asked § 87(2)(b) when he had last smoked marijuana in the vehicle. § 87(2)(b) responded he never smoked marijuana in the vehicle, and never allowed anyone to smoke marijuana in his vehicle. PO Catapano then instructed § 87(2)(b) to get out of the car. § 87(2)(b) complied. All of the occupants of the vehicle were instructed to get out of the vehicle by PO Catapano and PO Fitchik. PO Catapano frisked and allegedly searched § 87(2)(b) patting down his body, allegedly placed his hands into his front hoodie pocket and front and rear pockets of his pants, and patted down his pants (**Allegations A and B**, § 87(2)(g) PO Catapano did not go into § 87(2)(b) underwear.

PO Catapano and PO Fitchik frisked and allegedly searched § 87(2)(b) § 87(2)(b) and § 87(2)(b). As each person was searched, items found on their persons were allegedly removed and placed on the hood of PO Catapano's police vehicle (**Allegations C, D, E, F, G, H, I, J, K, L, M, N**, § 87(2)(g) PO Catapano and PO Fitchik then searched § 87(2)(b) vehicle, with PO Catapano searching the front driver's side and PO Fitchik searching the front passenger's side, then PO Fitchik searching the rear (**Allegations O and P**, § 87(2)(g).

After approximately twelve minutes, all four individuals were instructed to return to their vehicle. PO Catapano then approached § 87(2)(b) and issued him two summonses. One summons was for reckless driving, the other was for driving with a learner's permit in the City of New York without a vehicle with a second steering wheel.

No video evidence was recovered in the course of this investigation. The 113<sup>th</sup> Precinct did not have body-worn cameras at the time of the incident.

## **Findings and Recommendations**

**Allegation (A) Abuse of Authority: Police Officer Christopher Catapano frisked § 87(2)(b)**

**Allegation (B) Abuse of Authority: Police Officer Christopher Catapano searched § 87(2)(b)**

**Allegation (C) Abuse of Authority: Police Officer Christopher Catapano frisked § 87(2)(b)**

**Allegation (D) Abuse of Authority: Police Officer Christopher Catapano searched § 87(2)(b)**

**Allegation (E) Abuse of Authority: Police Officer David Fitchik frisked § 87(2)(b)**

**Allegation (F) Abuse of Authority: Police Officer David Fitchik searched § 87(2)(b)**

**Allegation (G) Abuse of Authority: Police Officer Christopher Catapano frisked an individual.**

**Allegation (H) Abuse of Authority: Police Officer Christopher Catapano searched an individual.**

**Allegation (I) Abuse of Authority: Police Officer David Fitchik frisked an individual.**

**Allegation (J) Abuse of Authority: Police Officer David Fitchik searched an individual.**

**Allegation (K) Abuse of Authority: Police Officer Christopher Catapano frisked an individual.**

**Allegation (L) Abuse of Authority: Police Officer Christopher Catapano searched an individual.**

**Allegation (M) Abuse of Authority: Police Officer David Fitchik frisked an individual.**

**Allegation (N) Abuse of Authority: Police Officer David Fitchik searched an individual.**

§ 87(2)(b) testified that he was wearing a hooded sweatshirt with a front pocket and pants with front and back pockets. PO Catapano searched § 87(2)(b) patting down his body, going into his front hoodie pocket and front and rear pockets of his pants. He stated that PO Fitchik and PO Catapano searched each other occupant of the vehicle, and removed items from their pockets, placing those items on the hood of the vehicle (BR01).

On January 16, 2019, § 87(2)(b) provided a telephone statement in which he did not provide any testimony regarding whether the odor of marijuana was present in § 87(2)(b) vehicle (Board Review 14). § 87(2)(b) did not provide a sworn statement.

PO Catapano testified that he frisked occupants of the vehicle by patting them down, but did not reach into anyone's pockets, go under waistbands, or conduct any physical actions that would constitute a search. He did not recall which specific occupants of the vehicle he frisked. He stated that the frisks were conducted to ensure officer safety (BR03).

PO Fitchik testified that he frisked the occupants of the vehicle seated on the passenger side, by patting them down. PO Fitchik frisked the individuals in the car to ensure officer safety. He did not conduct any physical actions that would constitute a search, such as reaching into anyone's pockets or going under coats (BR04).

PO Robert observed PO Catapano and PO Fitchik pat down the first individual removed from the vehicle. He denied observing them conduct any search of this individual. He did not observe these officers remove anyone else from the vehicle, and did not observe any frisks or searches of these individuals (BR06).

§ 87(2)(b), § 87(2)(g)

**Allegation (P) Abuse of Authority: Police Officer David Fitchik searched a vehicle in which § 87(2)(b) and individuals were occupants.**

PO Catapano testified he smelled marijuana from inside the vehicle driven by § 87(2)(b). He testified that he did not recall if he or PO Fitchik searched the vehicle, but that one of them searched the vehicle. He did not testify to whether he observed marijuana smoke inside the vehicle. Officers did not recover marijuana from the vehicle (BR03).

People v. Chestnut allows officers to conduct searches of vehicles when they detect the odor of marijuana (People v Chestnut, 43 AD2d 260 [3d Dept 1974]) (BR07).

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§ 87(2)(g)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (BR09).
- This is the first CCRB complaint involving § 87(2)(b) (BR10).
- PO Catapano has been a member of service for four years, and has been the subject of two CCRB cases with six allegations, both of which are currently under investigation at the CCRB.
- PO Fitchik has been a member of service for four years, and has been the subject of four CCRB cases with eleven allegations, all four of which are currently under investigation at the CCRB. CCRB Case No. 201809909, which is currently under investigation at the CCRB, also contains vehicle search allegations.

### Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation during his in-person interview (BR01).
- On April 30, 2019, the New York City Office of the Comptroller indicated that no Notice of Claim has been filed in regards to this incident (BR 13).
- § 87(2)(b)
- § 87(2)(b)
- On April 30, 2019, a request for the ticket disposition for § 87(2)(b) was sent to the New York State Department of Motor Vehicles (DMV) using DMV Form § 87(2)(b) 8). The results of this request will be added to the case file upon their receipt.

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Squad No.: 12

Investigator: \_\_\_\_\_ Investigator Zachary Herman \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Title & Name

\_\_\_\_\_  
Date